IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.6932 OF 2002
and
W.P.M.P.NO.18120 OF 2002

P. Mahendran .. Petitioner

-Vs-

1. The Chief Engineer,
North Chennai Thermal Power Station,
Tamil Nadu Electricity Board,
Chennai 600 120.

2. The Superintending Engineer (P & A),
North Chennai Thermal Power Station,
Tamil Nadu Electricity Board,
Chennai 600 120. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.N. Ravichandran

For Respondents : Mr.V. Radhakrishnan

:J U D G M E N T

Petitioner was working as a contract labourer in North Chennai Thermal Power Station from June 1991. Subsequently the Tamil Nadu Electricity Board took a decision to absorb on regular basis all contract labourers who have completed 480 working days as on 30.4.1999. Many such contract labourers were identified and issued individual entry pass. Pursuant to the decision of the Board, the petitioner was appointed as helper in Regular Work Establishment with effect from 27.10.19 99. Before joining the duty, the petitioner was called upon to produce certificates in support of his qualification and date of birth. He produced a record sheet dated 9.9.1999, purportedly issued by the Headmaster, Government Welfare Middle School, Vilangadupakkam, Chennai and joined duty on 10.11.1999 in the Regular Works Establishment as Helper in Class IV services of the Tamil Nadu Electricity Board of North Chennai Thermal Power Station, Chennai. The Board corresponded with the Headmaster of the concerned school, who informed the Board that the

petitioner had not studied in the said school. The petitioner was suspended from service and disciplinary proceeding was initiated on the ground that he has produced a false certificate. The petitioner submitted his explanation and requested the authorities to verify the certificate once again by reiterating that he had studied in the said school and had passed VIII Std. as indicated in the certificate. However, without making any further verification, a second show cause notice was issued by the Superintending Engineer. The petitioner filed his explanation by stating that the Headmaster has once again sent a letter stating that the earlier certificate was correct and on the basis of such subsequent correspondence from the Headmaster, the proceedings should be dropped. Notwithstanding the fact that the Headmaster in his letter dated 10.10.2000 addressed to the Superintending Engineer has indicated that the certificate was genuine, without making any further verification action was contemplated to be taken against the petitioner. At that stage, the petitioner filed W.P.No.61 49 of 2000, which was dismissed with the observation that the respondents would consider all the necessary documents. However, the second respondent has passed an order of termination on 23.3.2001 which was served on the petitioner on 10.7.2001, necessitating the filing of the present writ petition.

2. In the writ petition it has been contended that without examining the Headmaster, who had earlier written that the petitioner was not a student of the school but had subsequently issued another letter confirming the genuineness of the said certificate, the petitioner should not have been dismissed from the service.

3. In course of hearing it was also submitted that even assuming that the certificate issued was incorrect, no minimum educational qualification is required for the employment, and therefore, the petitioner had not derived any advantage and he should not have been terminated from the service on that score.

4. A counter affidavit has been filed on behalf of the respondents. While not denying about the earlier employment of the petitioner as a contract labourer and while admitting that he had been identified and had been subsequently given employment in the regular establishment, it is stated that the petitioner had given a false certificate regarding his educational qualification which was found to be incorrect on the basis of the letter written by the Headmaster. It has been further stated that on the basis of the enquiry report, after considering all relevant circumstances, the order of termination has been passed. t has been further indicated that the certificate produced by the petitioner has been sent to the Headmaster, who had given a reply that no such student had studied in the school, and therefore, there was no necessity to examine the Headmaster. It has been further stated that in the second certificate issued by the Headmaster, the date of birth is indicated as 10.2.1973 whereas in the first certificate date of birth is shown as 10.2.1971.

5. At the time of hearing of the writ petition, to a specific query the learned counsel for the Board has submitted that at the time of regularisation of the contract labourers no particular educational

qualification had been prescribed. It is thus evident that even assuming that a false certificate has been furnished it cannot be said that the petitioner had derived any particular advantage by producing the so called false certificate.

6. Learned counsel for the respondent has placed reliance upon the Division Bench decision of Karnataka High Court reported in 2000(4) L.L.N. 850 (MANAGEMENT OF V.I.S.L. BHADRAVATHI, SHIMOGA DISTRICT v. B. VEERANNA GOWDA PATIL AND ANOTHER). In the said case, the concerned employee had furnished a forged certificate regarding his educational qualification and had obtained appointment. Subsequently, in the disciplinary proceedings it was found that he had obtained appointment by playing fraud by producing the false certificate and he was terminated from the service. The Industrial Forum also concurred with the disciplinary authority. However, the learned single Judge took a view that the management had failed to place some records that any minimum qualification is required for the post and therefore, directed reinstatement with back wages.
In appeal, the Division Bench observed :

 . . . In our opinion, it is not at all material as to whether any minimum qualification was required for appointment of the respondent on the post in question. What was more material and clinching for adjudication of the charges and consequential punishment was whether the respondent had secured the appointment on a fraudulent representation and by furnishing forged educational/academic documents.

7. Relying upon the decision of the Supreme Court reported in A.I.R. 1996 SC 686 (UNION OF INDIA v. M. BHASKAR AND OTHERS) and other decisions reported in 1995(2)L.L.N. 968 (KERALA SOLVENT EXTRACTIONS LTD. v. UNNIKRISHNAN AND ANOTHER), 1990(1) L.L.N. 806 (DISTRICT COLLECTOR AND CHASIRMAN, VIZIANAGARAM SOCIAL WELFARE RESIDENTIAL SCHOOL SCOIETY, VIZIANAGARAM, AND ANOTHER v. M. TRIPURA SUNDARI DEVI), 1998(1)L. L.N. 361 (UNION OF INDIA v. A. NAGAMALLESHWAR RAO) and 2000(3) S.C.C. 581 (UNITED INSURANCE COMPANY LTD. v. RAJENDRA SINGH AND OTHERS) the Division Bench held that an employee who is found to be guilty of securing appointment by playing fraud on the employee is not entitled to any equitable consideration or relief. With the above observation, the appeal was allowed and the order of dismissal was confirmed.

8. The decision reported in 1996 SC 686 (cited supra) on which primary reliance has been placed by the Division Bench is clearly distinguishable. In the said case, the question was as to whether the workman who had obtained employment on the basis of bogus and forged casual labourer service cards will continue in railway service once such fraud is detected by railways. It was observed by the Supreme Court as follows :

 . . . The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the employees concerned. consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on

the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. Learned counsel for the respondents submitted that for getting service in railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employerappellant after following the due procedure of law and complying with the principles of natural justice. . . .□ (emphasis added)

9. From the aforesaid observation, (particularly the underlined portion) it is clear that the persons obviously got the employment on the basis of the forged certificate. In fact, they would not have been so employed if no such forged certificate would have been produced.

10. In the present case, the order of employment emanated from the policy decision taken by the Board to regularise all those who were employed as contract labourers for more than 480 days. It was not on the basis of any fraudulent representation made by the petitioner. Only as a matter of record the petitioner was called upon to produce certificate regarding qualification.

11. Learned counsel for the respondents has submitted that even though such qualification was not necessary at the time of employment, qualification may be required at the time of promotion. If it is actually found that the person has no qualification for promotion, at that stage the Board can deny such promotion, but on that score it was not justified to dismiss the petitioner. The punishment appears to be grossly disproportionate in the peculiar facts and circumstances of the case.

12. As already noticed, in the present case, subsequently the Headmaster has given a certificate that the petitioner had studied in the school. Such document was also available before the disciplinary authority before impugned order of dismissal was passed. Therefore, it was all the more necessary for the disciplinary authority to examine the Headmaster and to obtain necessary clarification.

13. For the aforesaid reasons, while quashing the order of dismissal, it is observed that in case it is felt necessary for the Board, further enquiry can be held by examining the Headmaster and calling upon the school authorities to produce all the relevant documents. The respondents are directed to reinstate the petitioner in service. Entire period should be counted towards service and seniority, etc. However, in the peculiar circumstances of the case, back wages shall not be paid to the petitioner for the period during which he has not worked. The petitioner should be reinstated in service within a period of thirty days from the date of communication of this order.

14. In the result, the writ petition is allowed. No costs. Consequently, WPMP.No.18120 of 2002 is closed.

Index : Yes
Internet : Yes
dpk

To

1. The Chief Engineer,
North Chennai Thermal Power Station,
Tamil Nadu Electricity Board,
Chennai 600 120.

2. The Superintending Engineer (P & A),
North Chennai Thermal Power Station,
Tamil Nadu Electricity Board,
Chennai 600 120.